remained in existence. I was also referred to the more recent case of *Williams* v. *Williams and Nathan* [2] on the same point.

Mr. Sothi submitted on behalf of the plaintiff that all the points raised by Mr. Mooney would have to be argued at the trial. A point to be argued at the trial, in his submission, was whether there was a judgment at the time of the execution. In other words, all these points were points of law which could best be argued at the trial after the parties had adduced their evidence.

The application for the statement of claim to be struck out was not supported by an affidavit. I mention this merely to point out that the plaintiff's assertion in his statement of claim that the summons in the Magistrate's Court was served on somebody other than himself was not refuted. On the basis of the plaintiff's assertion, it was quite clear that the defendants obtained their judgment against the plaintiff in the Magistrate's Court wrongfully, if not fraudulently, because no notice of the proceedings was given to the plaintiff.

I agreed with Mr. Mooney that on the authority of the cases which he cited no action could be brought for damages against the bailiff who effected the attachment, but in my opinion the authorities do not go so far as to say that no action will lie for damages for an attachment founded on a wrongful or fraudulent judgment against the party at whose instance such attachment is issued. Had the summons in the Magistrate's Court been served on the plaintiff in this case he might have met the claim or defended the action. If a judgment was obtained against him after he had been served, he might have paid the amount of the judgment into Court and saved himself the embarrassment of having his money in the Bank attached. As the judgment was obtained against him wrongfully or perhaps even fraudulently, *prima facie* he is entitled to claim damages for the attachment founded on that wrongful judgment. It is significant that the attachment itself was subsequently withdrawn and the judgment set aside. For those reasons I dismissed the application with costs.

Application dismissed.

Solicitors: *Lovelace & Hastings*; *Skrine & Co.*

CHAN YIN TEE v. WILLIAM JACKS & CO. (MALAYA) LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) April 30, 1964]

[K.L. — Federal Court Civil Appeal No. 1 of 1964]

Partnership — Adult partner holding out minor as partner — Whether minor an agent — Liability of adult partner to 3rd parties — Contracts (Malay States) Ordinance, 1950, ss. 135 to 137.

Agency — Agency by estoppel — Capacity of infant to become agent — Liability of principal to 3rd parties — Contracts (Malay States) Ordinance, 1950, ss. 135 to 137.

On November 15, 1961 the appellant registered himself and one Yong, a minor, under the Registration of Businesses Ordinance as trading in partnership as general merchants under the name of Chan & Yong Trading. At about the same time the appellant and Yong wrote to the Bangkok Bank in Kuala Lumpur applying to open a current account in their names and stating they were partners of a firm and cheques of the account would be signed by both of them. Before doing any business with the respondent company, the appellant and Yong met a representative of the respondent company in a coffee shop at which the appellant held himself out to be a partner with Yong in a hardware business. On this representation business between the parties commenced.

Between December 20, 1961 to June 3, 1962 goods were supplied to Yong. The respondents sued for the price and obtained judgment against the appellant and Yong (see [1964] M.L.J. 105). On appeal by the appellant,

Held: (1) irrespective of whether Yong was the appellant's partner, the appellant had held out Yong as his agent who had authority to do things on his behalf for whose acts the appellant was liable;

(2) any person, irrespective of his competency to contract, may become an agent, for whose acts the principal may be liable to third parties.

FEDERAL COURT.

M. J. Mathew for the appellant.

L. P. Thean for the respondents.

Thomson L.P. (delivering oral judgment): This appeal arises out of a claim for the price of goods sold and delivered brought by a local firm of merchants, which is a limited liability company, against two persons named Chan Yin Tee and Yong Yit Chong, who, it was alleged, were trading in partnership under a firm name which varied from time to time. The particular manifestation of that name which appears on the writ was Chan and Yong Trading Company, but in my opinion nothing whatsoever turns on that.

It would appear that at the time the goods were sold and delivered the second defendant, that is Yong, was a few months under the age of 21 years.

We are not concerned here with what ultimately happened in the case of Yong, but in the event judgment was entered against Chan for the full amount claimed and against that judgment Chan has now appealed.

There has been a great deal of discussion both at the trial and here as to the nature and indeed the very existence of the partnership.

The relationship between the two supposed partners as between themselves is no concern of ours in these proceedings. What we are concerned with is the liability of each of the individuals concerned *vis-a-vis* third parties and, in particular the liability of Chan to third parties, in particular to the plaintiffs in this action, who were the respondents to this appeal.

Whatever be the true state of affairs four things, I think, must at this stage be accepted.

The first of these is that on 15th November, 1961, that is to say four months before the first goods were supplied, the appellant registered himself and Yong under the Registration of Businesses Ordinance as trading in partnership as general merchants under the name of Chan & Yong Trading.

The second thing is that by a document which is not dated but which according to the evidence was executed about the same time Chan and Yong addressed a letter to the Bangkok Bank in Kuala Lumpur applying to open a current account in their names and stating they were partners of a firm and cheques of the account were to be signed by both of them.

The third thing is that a substantial amount of money was paid into that account to open it by Chan.

The fourth thing is that before doing any business with the respondent firm there was a meeting in a coffee shop between Chan and Yong and a representative of the respondent firm at which Chan held himself out to be a partner with Yong in a hardware business and it is clear that it was on that representation business between the parties commenced. I am fully aware that his presence at that meeting was denied by Chan, but it was found as a fact by the trial judge that he was present. That finding depended on the judge's estimate of the credibility of the witnesses who said Chan was there and of Chan himself and we as a Court of Appeal must accept it.

For myself I am content to leave the case there and say that on all that there was an agency by estoppel. Here I would quote the following passage from *Bowstead* on Agency (12th Ed. at p. 10) :—

"Where any person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of such other person with respect to any one dealing with him as an agent on the faith of such representation, to the same extent as if such other person had the authority which he was so represented to have."

Whether or not these people were in any partnership — it has been argued that Yong could not be a partner by reason of the decisions of the Privy Council in two cases that have been cited to us — irrespective of that, it is quite clear that Chan held out Yong as his agent who had authority to do things on his behalf and it seems to me that he is clearly liable for his agent's acts.

Some point has been made of the minority of Yong at the material time. That point I think is clearly covered by sections 135, 136 and 137 of the Contracts (Malay States) Ordinance, 1950. Section 135 provides that:

"An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'."

Section 136 reads as follows:

"Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent."

Section 137 states that:

"As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained."

It is a matter of interest that section 137 seems to be a little narrower than the English law but that is beside the point. It is perfectly clear that any person, irrespective of his competency to contract, may become an agent and the only restriction on that is that if he is of tender age he cannot become thereby responsible to his principal. But that has no bearing whatsoever on his principal's liability to third parties.

In all the circumstances for myself I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *M. J. Mathew*; *Shook Lin & Bok.*

CHENG SWEE TIANG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J., Chua & Ambrose JJ.) May 11, 1964]

[Singapore — Magistrate's Appeal No. 74 of 1963]

Evidence — Agent provocateur — Admissibility of illegally obtained evidence — Judicial discretion to disallow such evidence if prejudicial to accused — Public policy — Conflicting interests — Whether harm to public substantially incontestable — Evidence Ordinance (Cap. 4), s. 4.

While evidence unlawfully obtained is admissible if relevant, there is a judicial discretion to disallow such evidence if its reception would operate unfairly against an accused. *Kuruma* v. *The Queen* (1) and *Callis* v. *Gunn* (2) followed. From a standpoint of principle two important interests come into conflict when considering the question of admissibility of evidence so obtained. On the one hand there is the interest of the individual to be protected from illegal invasions of his liberties by the authorities and on the other hand the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from the courts on any merely technical ground. Purely on principle it is not clear that the harm to the public is substantially incontestable if evidence unlawfully obtained is admitted.

Per Ambrose J. (dissenting): "To my mind the discretion referred to in *Kuruma's* case and *Callis* v. *Gunn* seems to be a new development of the common law in England. It was not referred to by Lord Goddard in *Brannan* v. *Peek.*(6) It was not mentioned by Spenser